

Message Text

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43

ACTION EUR-25

INFO OCT-01 ISO-00 AID-20 CEA-02 CIAE-00 COME-00 EB-11

EA-11 FRB-02 INR-10 IO-14 NEA-14 NSAE-00 RSC-01

OPIC-12 SP-03 TRSE-00 CIEP-02 LAB-06 SIL-01 SWF-02

OMB-01 L-03 SS-20 NSC-07 PA-04 PRS-01 USIA-15 DOTE-00

DRC-01 /189 W

----- 011414

R 140930Z MAY 74

FM AMEMBASSY ROME

TO SECSTATE WASHDC 4768

INFO USMISSION EC BRUSSELS

USMISSION OECD PARIS

AMCONSUL MILAN

AMCONSUL NAPLES

AMCONSUL FLORENCE UNN

AMCONSUL GENOA UNN

AMCONSUL PALERMO UNN

AMCONSUL TRIESTE UNN

AMCONSUL TURIN UNN

LIMITED OFFICIAL USE SECTION 1 OF 2 ROME 6597

E.O. 11652: PFOR, EFIN, IT

TAGS: N/A

SUBJECT: US-ITALY DOUBLE TAXATION CONVENTION: STATUS OF NEGOTIATIONS

OECD PASS TANNER FOR NATHAN GORDON

1. SUMMARY. MEETING WAS HELD BETWEEN USG AND GOI TAX OFFICIALS AT MINFIN MAY 9-10 TO DISCUSS APPLICABILITY OF 1955 DOUBLE TAXATION CONVENTION TO ITALIAN INCOME TAXES INTRODUCED ON JANUARY 1, 1974. DISCUSSION CENTERED ON (1) INTENT OF BOTH GOVERNMENTS TO CONTINUE
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IN BEING SOME FORM OF DOUBLE TAXATION CONVENTION;

(2) INITIAL DISAGREEMENT AS TO WHETHER NEW SO-CALLED LOCAL INCOME TAX (ILOR) SHOULD BE COVERED BY CONVENTION;
(3) EFFECT OF NEW TAXES ON DIVIDEND PAYMENTS FROM US TO ITALY; (4) APPLICABILITY OF NEW 20 PER CENT WITHHOLDING TO ROYALTY PAYMENTS FROM US TO ITALY; AND (5) TAX AND TAX ACCOUNTING STATUS OF US AIR SHIPPING COMPANIES.
END SUMMARY.

2. BASIC APPROACH. BOTH GOVERNMENTS AGREED THAT THEY WISHED TO MAINTAIN CONVENTIONAL ARRANGEMENT TO AVOID DOUBLE TAXATION AND FISCAL EVASION. THEY FORESAW THE NEED FOR A TEMPORARY PROTOCOL WHICH WOULD REQUIRE RATIFICATION BY BOTH PARLIAMENTS IN ORDER TO DEAL WITH IMMEDIATE PROBLEMS PENDING SUBSEQUENT MODIFICATION OF OLD TREATY OR NEGOTIATION OF NEW TREATY. BASIC APPROACH WOULD BE TO MODIFY ARTICLE 1.B. OF TREATY SO AS TO SUBSTITUTE LIST OF NEW TAXES COVERED BY TREATY FOR LIST OF OLD TAXES. AIM WOULD BE TO MAINTAIN STATUS QUO OF TAX TREATMENT AS NEARLY AS POSSIBLE DURING INTERIM PERIOD.

3. COVERAGE OF TREATY

A. THERE WAS AGREEMENT THAT NEW PERSONAL INCOME TAX (IMPOSTA SUL REDDITO DELLE PERSONE FISICHE - IRPF) AND NEW CORPORATE INCOME TAX (IMPOSTA SUL REDDITO DELLE PERSONE GIURIDICHE - IRPG) WERE SUCCESSORS TO PREVIOUS TAXES COVERED BY CONVENTION AND SHOULD, IN PRINCIPLE, BE COVERED BY ANY NEW PROTOCOL. MAJOR ISSUE INVOLVED IS WHETHER OR NOT NEW LOCAL TAX (IMPOSTA LOCALE SUI REDDITI - ILOR) SHOULD BE COVERED BY CONVENTION. GOI REPRESENTATIVES ARGUED THAT ILOR WAS LOCAL INCOME TAX SINCE (A) ALL OF REVENUE IS TURNED OVER TO LOCAL BODIES, (B) ASSESSMENT IS CARRIED OUT PARTLY BY LOCAL TAX AUTHORITIES AND (C) LOCAL AUTHORITIES MAY FIX TAX RATES WITHIN RANGE ESTABLISHED BY NATIONAL LAW. USG REPS INSISTED THAT TAX WAS NOT REALLY LOCAL TAX BUT HAD ASPECTS OF REVENUE SHARING SIMILAR TO SITUATION IN US. FURTHERMORE, NEW TAX HAD BEEN CREATED ON AUTHORITY OF NATIONAL PARLIAMENT, IT WILL BE COLLECTED BY LIMITED OFFICIAL USE

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NATIONAL TAX AUTHORITIES AND PERMISSIBLE RANGE OF TAX RATES WAS ESTABLISHED BY NATIONAL PARLIAMENT FINALLY, EXCLUSION OF ILOR FROM TREATY COVERAGE WOULD REDUCE EFFECTIVE TAX COVERAGE OF CONVENTION ON ITALIAN SIDE SINCE ILOR TAX RATE (MAXIMUM OF 14.7 PER CENT) WAS MUCH HIGHER THAN LOCAL TAXES NOW ABOLISHED OF ABOUT 5-6 PER CENT.

B. ITALIAN REPS INSISTED THAT ILOR WAS LOCAL TAX

AND THAT, UNLESS USG COULD COMMIT ITSELF TO HAVING
CONVENTION COVER BOTH STATE AND LOCAL INCOME TAXES
IN US, THERE WOULD BE INADEQUATE RECIPROCITY. BOTH
SIDES AGREED TO EXAMINE FURTHER TAX IMPLICATIONS OF
INCLUDING ILOR IN CONVENTION ON ITALIAN SIDE AND OF INCLUDING
SOME REFERENCE OF US SIDE TO DE FACTO SITUATION WHEREBY
US LOCAL AUTHORITIES DO NOT NOW IMPOSE WITHOLDING
TAX ON TYPES OF INCOME COVERED BY CONVENTION. US
MIGHT ALSO COMMIT ITSELF TO USE ITS GOOD OFFICES
WITH US LOCAL AUTHORITIES TO AVOID INTRODUCTION OF
WITHOLDING TAXES WHICH MIGHT BE IN CONFLICT WITH US
AIMS. IF THIS FAILED GOI MIGHT WITHDRAW CONVERAGE OF ILOR.
NEITHER SIDE WAS PREPARED TO MAKE ANY COMMITMENT
AS YET.

4. DIVIDENDS. CONTINUATION OF PRESENT 5 PER CENT OR 15 PER CENT
WITHOLDING ON DIVIDEND PAYMENTS UNDER ARTICLE 7 OF
TREATY SEEMED TO PRESENT MINIMUM PROBLEM SINCE IRPF
AND IRPG WOULD PRESSUMABLY BE COVERED BY NEW PROTOCOL
AND SINCE ILOR WAS NOT APPLICABLE, IN ANY CASE, TO
DIVIDENDS.

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LIMITED OFFICIAL USE SECTION 2 OF 2 ROME 6597

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5. ROYALTIES. THERE WAS CONSIDERABLE DISCUSSION OF
PROBLEM OF NEW 20 PER CENT WITHHOLDING AGAINST 70 PER CENT OF
INDEPENDENT INCOME (I.E., ROYALTIES, FILM RIGHTS, ETC.).
ITALIAN AUTHORITIES POINTED OUT THAT 20 PERCENT WITHHOLDING IS
MEANT TO BE APPLIED AGAINST TAX LIABILITIES WHICH MAY ARISE
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UNDER IRPF, IRPG AND ILOR. THEY ADMITTED THAT TEXT
OF DECREE DID NOT MAKE CLEAR WHETHER WITHHOLDING WAS
NECESSARY AGAINST ANY SINGLE ONE OF THESE TAXES, SUCH
AS ILOR. FOR EXAMPLE, IF ROYALTY PAYMENTS WERE
CLEARLY EXEMPT FROM IRPF AND IRPG, AS SEEMED LIKELY
UNDER THE NEW PROTOCOL, THEN LOGICALLY 20 PER CENT WITHHOLDING
COULD ONLY BE MADE AGAINST POSSIBLE ILOR LIABILITY.
GOI WOULD HAVE TO CONSIDER WHETHER IT WOULD BE POSSIBLE
NOT TO INSIST UPON WITHHOLDING IN THIS CASE WHERE
TAXPAYER WAS CLEARLY EXEMPT FROM TWO OF THESE THREE
TAXES. INTERPRETATION HAD BROAD IMPLICATIONS AND NO
COMMITMENT COULD BE MADE AT THIS STAGE AS TO FINAL
DECISION.

6. AIR AND SHIPPING LINES. US REPS POINTED OUT THAT
AIR AND SHIPPING LINES WOULD LIKELY BE EXEMPT FROM
IRPF AND IRPG BUT WOULD BE SUBJECT TO ILOR, IF ILOR NOT
COVERED BY TREATY. APART FROM INCREASED TAX LIABILITY
IN LATTER CASE, COMPLEX TAX ACCOUNTING REQUIREMENTS
WOULD BE NECESSARY IF ALL ACCOUNTING PROVISIONS OF
DECREES WERE ENFORCED. THIS WOULD CREATE SEVERE
BURDEN ON COMPANIES WHOSE MULTINATIONAL OPERATIONS MADE
IT DIFFICULT TO ALLOCATE EXPENSES AMONG DIFFERENT
NATIONAL MARKETS IN WHICH THEY OPERATE. GOI OFFICIALS
IMPLIED THAT SOME ACCOMMODATION MIGHT BE POSSIBLE TO
REDUCE ACCOUNTING BURDEN IF AIR AND SHIPPING COMAPNIES

WERE EVENTUALLY LIABLE ONLY FOR ILOR.

7. GOI REPS AGREED WITH USG REPS THAT ANY PROTOCOL SHOULD BE RETROACTIVE TO JANUARY 1, 1974. GOI INDICATED THAT THERE COULD BE REIMBURSEMENTS OF ANY WITHHOLDING WHICH EVENTUALLY PROVED TO BE IN EXCESS OF THAT PERMITTED UNDER NEW PROTOCOL. USG HOPED, INSTEAD, THAT WITHHOLDING COULD BE REDUCED OR SUSPENDED SO AS TO AVOID BUILD-UP OF EXCESS TAX PAYMENTS.

8. COMMENT. RECIPIENTS ARE FREE TO US ABOVE DESCRIPTION OF MAY 9-10 MEETING WITH DISCRETION IF APPROACHED BY US BUSINESS INTERESTS. EMBASSY PLANS HOLD DEBRIEFING SESSION WITH GROUP OF PUBLIC ACCOUNTANTS, TAX CONSULTANTS, MANAGEMENT FIRMS AND AMERICAN LIMITED OFFICIAL USE

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CHAMBER OF COMMERCE REP ON MAY 14. WHILE WE HAVE TRIED TO BE AS FRANK AS POSSIBLE IN THESE DEBRIEFING SESSIONS, PRUDENCE SHOULD BE EXERCISED DURING PRESENT PRE-NEGOTIATION OF PROTOCOL. POSSIBILITY OF SOME TRADE-OFF BETWEEN INCLUSION OF ILOR AND GOI AND SOME KIND OF COMMITMENT RE STATE AND LOCAL INCOME TAXES BY USG IS PARTICULARLY UNCERTAIN AND PARTICULARLY DELICATE ISSUE. WE SUGGEST YOU MERELY INDICATE THAT QUESTION OF ILOR COVERAGE IS STILL BEING DISCUSSED. ALSO, FACT THAT GOI AUTHORITIES ARE CONSIDERING POSSIBLE INTERPRETATION WHICH WOULD NOT REQUIRE 20 PER CENT WITHHOLDING AGAINST ILOR ON ROYALTIES IS ALSO SOMEWHAT DELICATE.

9. EVENIF MUTUAL AGREEMENT CAN BE REACHED ON TEMPORARY PROTOCOL,THIS WOULD REQUIRE RATIFICATION WHICH COULD INVOLVE CONSIDERABLE DELAY, AT LEAST ON PART OF GOI. WE HAVE NOT YET FULLY EXPLORED APPLICABILITY OF VARIOUS PROVISIONS OF PROTOCOL AND OF UNCHANGED PORTIONS OF 1955 TREATY DURING PERIOD AFTER PROTOCOL WAS SIGNED BUT NOT YET RATIFIED. IT IS CONCEIVABLE THAT USG MIGHT EVENTUALLY DENOUNCE TREATY IF PROTOCOL HAS NOT BEEN SIGNED BY JUNE 30. IF, HOWEVER, BASIC AGREEMENT SEEMS POSSIBLE IN NEAR TERM,DENUNCIATION MIGHT BE MERELY REVERSIBLE PRO FORMA ACT, DEPENDING UPON EVENTUAL CONCLUSION OF NEGOTIATION OF PROTOCOL. PRESENT TREATY PROVIDES THAT SIX MONTHS NOTICE MUST BE GIVEN FOR DENUNCIATION, SO THAT, EVEN IF IT WERE DENOUNCED ON JUNE 30, TREATY WOULD REMAIN IN EFFECT DE JURE IN BOTH COUNTRIES AND DE FACTO, AT LEAST FOR US, UNTIL END-1974. WE ARE URGING RAPID CONSIDERATION OF PROBLEM AND HOPE TO HAVE DRAFT PROTOCOL AND ANOTHER MEETING WITH GOI BEFORE JUNE 30 DEADLINE. SUGGEST THAT ANY DIFFICULT QUESTIONS CONCERNING ABOVE MATTERS BE

REFERRED TO TREASURY ATTACHE'S OFFICE AT EMBASSY.
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